

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

ALLEN DAVID DANIEL,

Petitioner,

v.

Case Number 06-CV-12343
Honorable David M. Lawson

BLAINE LAFLER,

Respondent.

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ORDER DISMISSING PETITION
FOR A WRIT OF HABEAS CORPUS AS DUPLICATIVE

The petitioner, Allen David Daniel, is a state prisoner currently confined at the St. Louis Correctional Facility in St. Louis, Michigan, who has filed his second petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 alleging that he is incarcerated in violation of his constitutional rights. The petitioner was convicted by a Wayne County, Michigan Circuit Court jury in 2005 of assault with intent to commit murder and possession of a firearm during the commission of a felony and was sentenced to 17 to 35 years imprisonment on the assault conviction, with a consecutive term of two years imprisonment on the felony firearm conviction. In the present case, the petitioner raises claims concerning the state court's jurisdiction, his speedy trial rights, fraud upon the court and obstruction of justice, and his due process right to a fair trial.

However, the petitioner also has filed a prior habeas action in this Court challenging the same convictions and raising the same claims, which is currently pending before the Honorable Paul V. Gadola. *See Daniel v. Curtin*, No. 06-10718 (amended habeas petition). The present case, therefore, must be dismissed as duplicative. A suit is duplicative and subject to dismissal if the

claims, parties, and available relief do not significantly differ from an earlier-filed action. *See, e.g., Barapind v. Reno*, 72 F. Supp. 2d 1132, 1145 (E.D. Cal. 1999). Such is the case here: the petitioner's current habeas petition challenges the same convictions and sentences and is based on the same grounds as the previous case assigned to Judge Gadola. Therefore, the present petition is subject to dismissal as a duplicate petition. *See, e.g., Flowers v. Trombley*, 2006 WL 724594, *1 (E.D. Mich. March 17, 2006); *Harrington v. Stegall*, 2002 WL 373113, *2 (E.D. Mich. Feb. 28, 2002); *see also Davis v. United States Parole Comm'n*, 870 F.2d 657, 1989 WL 25837, *1 (6th Cir. March 7, 1989) (holding that a district court may dismiss a habeas petition as duplicative of a pending habeas petition when the second petition is essentially the same as the first petition).

Accordingly, it is **ORDERED** that the petition for a writ of habeas corpus is **DISMISSED** as duplicate petition without prejudice to the adjudication of the habeas petition filed as Case No. 06-10718.

s/David M. Lawson
DAVID M. LAWSON
United States District Judge

Dated: June 1, 2006

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first class U.S. mail on June 1, 2006.

s/Tracy A. Jacobs
TRACY A. JACOBS